

ELECTRONICALLY FILED

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

BK-S-06-10725-LBR
Chapter 11

In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

BK-S-06-10726-LBR
Chapter 11

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,
Debtor.

BK-S-06-10727-LBR
Chapter 11

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

BK-S-06-10728-LBR
Chapter 11

In re:
USA SECURITIES, LLC,
Debtor.

BK-S-06-10729-LBR
Chapter 11

Affects

- ☒ All Debtors
☐ USA Commercial Mortgage Co.
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed
☐ USA First Trust Deed Fund, LLC

Date: January 24, 2007
Time: 3:30 p.m.

**DECLARATION OF MATTHEW KVARDA IN SUPPORT OF OPPOSITION TO MOTION FOR
STAY PENDING APPEAL (AFFECTS ALL DEBTORS)**

1 I, Matthew Kvarda, declare as follows:

2 1. I am a managing director of Alvarez & Marsal, LLC, financial and real
3 estate advisors to the Official Committee of Equity Security Holders of USA Capital First Trust
4 Deed Fund, LLC (the "FTDF Committee"). I submit this Declaration in support of the "Opposition
5 to Motion for Stay Pending Appeal" (the "Opposition")¹ to be filed by USA Commercial Mortgage
6 Company ("USACM"), USA Securities, LLC ("USA Securities"), USA Capital Realty Advisors,
7 LLC ("USA Realty"), USA Capital Diversified Trust Deed Fund, LLC ("DTDF"), and USA
8 Capital First Trust Deed Fund, LLC ("FTDF" and collectively with USACM, USA Securities,
9 USA Realty, and DTDF, the "Debtors"), in which the FTDF Committee intends to join.

10 2. The following facts are personally known to me and/or based on my
11 personal observations. If called to testify thereto, I could and would do so, under oath.

12 3. In connection with the above-captioned cases (the "Chapter 11 Cases"), I
13 and the members of the engagement team have worked closely with the members of the FTDF
14 Committee and its other professionals regarding the development of a workable exit strategy which
15 maximized the potential return to investors in USA Capital First Trust Deed Fund, LLC (the
16 "FTDF").

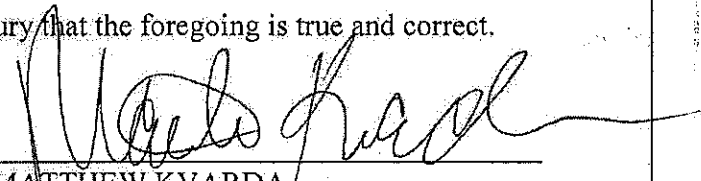
17 4. Attached hereto as Exhibit "1" is my analysis, as of January 22, 2007, of the
18 net proceeds of the sale (the "Sale") of substantially all of the assets of the FTDF and certain assets
19 of USACM pursuant to the Asset Purchase Agreement dated and effective as of December 8, 2006
20 [Bankruptcy Docket No. 2164] (the "Asset Purchase Agreement") made by and between, USACM
21 and FTDF and DTDF, USA Realty and USA Securities, as acknowledging parties, and Compass
22 Partners, LLC ("Compass"). As of January 22, 2007, the net proceeds of the Sale would be
23 \$54,835,650.00, which amount represents the gross purchase price of \$67,000,000.00 less (1) a
24 break-up fee in the amount of \$1,500,000.00 to be paid to SPCP Group, LLC, and (2) FTDF's
25 proportional interest in principal paydowns in the amount of \$12,344,024.00; plus purchase price
26 adjustments in the amount of \$1,679,674.00 pursuant to the Asset Purchase Agreement on account
27

28 ¹ Capitalized terms not otherwise defined herein have the meaning set forth in the Opposition.

1 of principal paydowns on loans in which the FTDF holds an interest.

2 5. Attached hereto as Exhibit "2" is my analysis, as of January 22, 2007, of the
3 bond amount that would be necessary to ensure that the Debtors' estates, their creditors, and their
4 investors are not damaged by the stay pending appeal sought by the Appellants in the event that the
5 Sale is not consummated on account of such appeal and the Appellants do not prevail on their
6 appeal. As of January 22, 2007, a bond in the minimum amount of \$30,500,000 is required to
7 protect the Debtors' estates, their creditors, and their investors from a stay pending appeal. My
8 analysis yields this amount by (1) beginning with net proceeds of the Sale in the amount of
9 \$54,835,650.00; (2) adding interest at the Prime Rate of 8.25% for a minimum of six months; (3)
10 deducting the liquidation values in the amount of \$32,754,300.00 for the assets being sold to
11 Compass, which liquidation values are set forth in the liquidation analysis attached as an exhibit to
12 the Debtors' Disclosure Statement; and (4) adding a minimum of six months of incremental
13 professional fees at the rate of \$1,000,000.00 per month.

14
15 I declare under penalty of perjury that the foregoing is true and correct.

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17 
18 MATTHEW KVARDA

19 Alvarez & Marsal, LLC
20 Financial and real estate advisor to the Official
21 Committee of Equity Security Holders of USA
22 Capital First Trust Deed Fund, LLC
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EXHIBIT "1"**USA CAPITAL****NET PROCEEDS FROM COMPASS CALCULATION**

Total Gross Compass Purchase Price	\$ 67,000,000
Less: Silver Point Break-Up Fee	<u>(1,500,000)</u>
	65,500,000
Less: FTDF principal paydowns since July 31st	<u>(12,344,024)</u>
	53,155,976
Plus: APA adjustments to FTDF principal paydowns since July 31st	<u>1,679,674</u>
Net Proceeds from Compass sale	<u><u>\$ 54,835,650</u></u>

EXHIBIT "2"**USA CAPITAL
STAY PENDING APPEAL BOND CALCULATION**

Net proceeds from Compass sale	\$ 54,835,650	[1]
Estimated interest on net proceeds from Compass sale	2,261,971	[2]
	<u>57,097,621</u>	
Less: Debtors' liquidation values for assets being sold to Compass	(32,754,300)	[3]
	<u>24,343,321</u>	
Plus: Estimated Incremental professional fees from stay pending appeal	6,000,000	[4]
	<u>30,343,321</u>	
Rounded	<u><u>\$ 30,500,000</u></u>	

[1] Please see Exhibit 1.

[2] Calculated at the Prime Rate (8.25%) for six months.

[3] Reflects the amounts shown for "Investments in Loans" in the USACM and FTDF liquidation analyses prepared by the Debtors and included as an exhibit to the Debtors' disclosure statement.

[4] Estimated at, on average, \$1 million per month for 6 months.